

# CHAPTER 1

## BACKGROUND

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### **Section A. Directive for Unorganized Borough Review.**

The 2002 Alaska Legislature directed the Local Boundary Commission to determine which areas of Alaska's unorganized borough meet the standards for incorporation of boroughs. Specifically, the Alaska House of Representatives approved "House CS for CS for Senate Bill No. 359(FIN)" by a vote of 35 – 0 (with 5 members absent); the Senate approved the measure by a vote of 19 – 0 (with 1 member absent). Then-Governor Knowles signed the bill into law as Chapter 53, SLA 2002.

Section 3 of Chapter 53, SLA 2002 mandated the Local Boundary Commission to undertake this review of the unorganized borough. Specifically, Section 3 of the law provides as follows:

**Sec. 3.** The uncoded law of the State of Alaska is amended by adding a new section to read:

NEW BOROUGH INCORPORATION. The Local Boundary Commission shall review conditions in the unorganized borough. By the 30th day of the First Regular Session of the Twenty-Third Alaska State Legislature, the commission shall report to the legislature the areas it has identified that meet the standards for incorporation. No portion of the report under this section constitutes a Local Boundary Commission proposal for purposes of art. X, sec. 12, Constitution of the State of Alaska.

Chapter 53, SLA 2002 calls for the Commission to report its findings to the Legislature by February 19, 2003.

### **Section B. Nature of Borough Government in Alaska**

The term "borough" refers generally to "a place organized for local government purposes" (*Black's Law Dictionary*). Boroughs are not unique to Alaska. They

1 exist in other countries (e.g., United Kingdom) and in other states in this country  
2 (e.g., New York, New Jersey, Connecticut, Pennsylvania, and New Hampshire).

3  
4 Boroughs in Alaska, however, are not at all like their namesakes elsewhere.  
5 Boroughs in other states are typically the equivalent of small cities. They have  
6 origins in colonial America, where boroughs were virtually the only municipal  
7 corporation in existence. *Municipal Government and Administration in America*,  
8 Jewell Cass Phillips, p. 123 (1960).

9  
10 In contrast, the borough in Alaska is an innovative, modern form of local  
11 government. The fact that Alaska lacked regional governments before statehood  
12 gave the Alaska Constitutional Convention delegates freedom to fashion a  
13 modern governmental concept to serve the diverse needs of Alaska. The new  
14 form of government was designated the “borough.”<sup>1</sup> It was designed to avoid  
15 fundamental problems inherent in local government structures – particularly the  
16 county form of government – evident in states existing at the time.<sup>2</sup>

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<sup>1</sup> Thomas Morehouse and Victor Fischer noted that:

Much controversy surrounded the selection [by the delegates to the Alaska Constitutional Convention] of the name “borough.” While there were strong proponents of the word “county” (as well as canton, division, province, and others), the majority believed that the term [county] had a very definite connotation and that its use should be avoided in order to preclude rigid thinking as well as restrictive court interpretations and decisions based on the extensive body of county law developed in the older states. It was believed that a different name could more readily be interpreted in the context of the Alaska Constitution; Black’s Law Dictionary defines “borough” as “a place organized for local government purposes.” See *Minutes*, 18<sup>th</sup>, 29<sup>th</sup> Meetings; *Commentary*, p. 4; *Proceedings*, pp. 2618-19; 2777-87, 3599-3608, 3621-25, 3627.

As it turned out, the strangeness of the name did not help endear the borough concept to the people, and the use of the more familiar term “county” might have facilitated general acceptances. Years after statehood, however, this is a moot point since the borough exists and any change in name would only create confusion.

*Borough Government in Alaska*, Thomas Morehouse and Victor Fischer, page 37 (1971).

<sup>2</sup> “As seen by the delegates, the inadequacies of counties included limited functional jurisdiction, frozen boundaries, an overabundance of constitutionally established elective offices, and lack of specifically local governmental authority.

1  
2 There are two broad types of boroughs in Alaska – organized and unorganized  
3 boroughs. Organized boroughs are municipal corporations and political  
4 subdivisions of the State of Alaska.<sup>3</sup> As reflected in the following account, the  
5 founders of Alaska’s governmental structure envisioned organized boroughs as  
6 the primary unit for the delivery of local services.  
7

8 At the center of Alaska’s local governmental scheme was the borough. As  
9 a vehicle for unifying local legislative and executive authority, and for  
10 coordinating the administration of state and local functions, borough  
11 government was Alaska’s attempt to reach “at one stride a goal that local  
12 government reformers and specialists have been striving to attain in many  
13 states over a period of several generations.”<sup>4</sup>  
14

15 The borough was intended to serve as an all-purpose instrument of local  
16 government.<sup>5</sup> It was to encompass a “natural” social, economic, and  
17 political community, and serve both urban and rural needs; it was to be  
18 primarily responsible for functions best carried out on an areawide, rather  
19 than a limited community, basis; and it was to be highly adaptable,  
20 changing its shape and powers in response to the population and  
21 economic growth of an area.  
22

23 *Borough Government in Alaska*, Thomas A. Morehouse and Victor Fischer, p. 6  
24 (1971).  
25

26 The founders also provided for unorganized boroughs because they “perceived  
27 that parts of the state would not be ready for incorporation as organized  
28 boroughs due to fiscal and administrative inability to support areawide functions.”  
29 *Id.*, p. 41. The conceptual nature of unorganized boroughs is described as  
30 follows:  
31

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They noted also that numerous special districts were created to fill service gaps left by counties and municipalities, resulting in a multiplicity of overlapping taxing jurisdictions.” *Id.*, p. 37-38.

<sup>3</sup> See AS 29.04.010 - 29.04.020.

<sup>4</sup> (Footnote original) Public Administration Service, *Constitution Studies*, prepared on behalf of the Alaska Statehood Committee for the Alaska Constitutional Convention, November 1955 (mimeo.), Vol. III, p. 60.

<sup>5</sup> (Footnote original) Chapter III below discusses in detail the concept of the borough and the local government deliberations of the Constitutional Convention of 1955-56.

1 Unlike the organized borough, legally a municipal corporation,  
2 unorganized boroughs were regarded as instrumentalities of the state.  
3 They would serve as vehicles for decentralizing and regionalizing state  
4 services and for fostering local participation in the administration of  
5 state programs within regions not ready or suited for corporate  
6 municipal status.

7  
8 *Id.*, p.41.  
9

10 Additional information about the fundamental nature of boroughs is provided in  
11 Section C of this chapter and throughout Chapter 2 of this report.  
12

## 13 **Section C. Role of the Legislature Regarding Boroughs**

14 Part 1. Duties Imposed by Alaska's Constitution

15 Part 2. Express Constitutional Authorities

16 Part 3. Performance of Duties and Exercise of Authorities  
17

### 18 **Part 1. Duties Imposed by Alaska's Constitution**

19 Article X, Section 3 of Alaska's constitution requires the Legislature to set  
20 fundamental public policies regarding the establishment, alteration, and nature of  
21 boroughs. It provides as follows:

22 The entire State shall be divided into boroughs, organized or  
23 unorganized. They shall be established in a manner and according  
24 to standards provided by law. The standards shall include  
25 population, geography, economy, transportation, and other factors.  
26 Each borough shall embrace an area and population with common  
27 interests to the maximum degree possible. The legislature shall  
28 classify boroughs and prescribe their powers and functions.  
29 Methods by which boroughs may be organized, incorporated,  
30 merged, consolidated, reclassified, or dissolved shall be prescribed  
31 by law".<sup>6</sup>  
32

33 In sum, Section 3 requires the Legislature to:

- 34 (1) enact standards for establishment of organized and unorganized boroughs;  
35 (2) enact procedures for establishment of organized and unorganized boroughs;  
36 (3) classify boroughs;  
37 (4) prescribe the powers and functions of boroughs; and  
38 (5) enact methods by which boroughs may be "organized, incorporated, merged,  
39 consolidated, reclassified, or dissolved."  
40

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<sup>6</sup> The term "by law" is defined by Article XII, Section 11 of the constitution to mean "by the Legislature." It states, "As used in this constitution, the terms 'by law' and 'by the legislature,' or variations of these terms, are used interchangeably when related to law-making powers..."

1 The plain language of the second sentence of Section 3 (“They shall be  
2 established in a manner and according to standards established by law.”) is  
3 unambiguous. The pronoun “they” clearly refers to “boroughs, organized and  
4 unorganized” used in the preceding sentence. There is simply no basis for  
5 asserting that “they” refers “boroughs, organized but not unorganized” or that it  
6 refers to “boroughs, not organized but unorganized.” Thus, Section 3 requires  
7 the Legislature to enact standards and procedures for the establishment of both  
8 types of boroughs.

10 The duty of the Legislature to enact standards and procedures for both types of  
11 boroughs is a critical point in terms of the borough concept. Further indication  
12 that standards and procedures are required for both types of boroughs is found in  
13 the fact that the second sentence of Section 3 uses the general expression  
14 “establish” rather than the more specific terms “incorporate” or “organize.” Since  
15 an unorganized borough is neither “incorporated” nor “organized”, those more  
16 specific terms are unsuited to the broad application of the second sentence to  
17 both types of boroughs. The broader term “establish” was fitting, again, because  
18 the second sentence applies to both types of boroughs – organized and  
19 unorganized.

21 Moreover, the last sentence of Section 3 (“Methods by which boroughs may be  
22 organized, incorporated, merged, consolidated, reclassified, or dissolved shall be  
23 prescribed by law.”) offers further evidence of the requirement for standards and  
24 procedures governing establishment of both types of boroughs. The last  
25 sentence uses the specific terms “organized” and “incorporated” that were  
26 avoided in the second sentence. Again, those terms are clearly applicable only  
27 to organized boroughs, as are other terms used in the last sentence (i.e.,  
28 “reclassified”, “dissolved”, and, arguably, “merged” and “consolidated”).

30 If the pronoun “they” in the second sentence applied only to organized boroughs,  
31 significant portions of Section 3 would be rendered surplus. Specifically, the  
32 provisions of the last sentence requiring the Legislature to establish methods by  
33 which boroughs may be organized and incorporated would then be redundant.

35 Alternatively, given the specific terms used in last sentence – “organized” and  
36 “incorporated” – the provisions of the second sentence requiring the Legislature  
37 to enact procedures for establishment of boroughs would be superfluous if it  
38 applied only to organized boroughs.<sup>7</sup>

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<sup>7</sup> The rules of statutory construction force the rejection of any argument that provisions of Section 3 are redundant. The U.S. Supreme Court held as follows in this regard:

We are not at liberty to construe any statute so as to deny effect to any part of its language. It is a cardinal rule of statutory construction that significance and effect shall, if possible, be accorded to every word. As early as in Bacon's Abridgment, § 2, it was said that 'a

1  
2 Beyond Section 3, other parts of Article X impose additional requirements on the  
3 Legislature regarding boroughs. Specifically:

- 4     ▪ Section 4 provides that the legislature must establish the composition of  
5       borough assemblies, at least for general law boroughs;
- 6     ▪ Section 6 requires the Legislature to “provide for the performance of services  
7       it deems necessary or advisable in unorganized boroughs, allowing for  
8       maximum local participation and responsibility;”
- 9     ▪ Section 12 calls for the Legislature to establish “a local boundary commission  
10       or board” with implicit authority for determining the initial boundaries of  
11       boroughs and also for making adjustments to borough boundaries;
- 12    ▪ Section 14 obliges the Legislature to establish an executive branch agency to  
13       advise and assist boroughs (and cities), review their activities, collect and  
14       publish local government information, and perform other duties; and

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statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word, shall be superfluous, void, or insignificant.’ This rule has been repeated innumerable times.” Justice Strong, *United States v. Lexington Mill & E. Co.*, 232 US 399, pp. 409. (1914) (emphasis added)

To add to the evidence that the Legislature is required to enact standards and procedures for both establishment of both organized and unorganized boroughs, consideration should be given to the drafting guidelines adopted by the Style and Drafting Committee at Alaska’s Constitutional Convention. Those guidelines included the following (emphasis added):

- No unnecessary words should be used.
- Uniformity of expression is important; brevity is desirable, but precision should not be sacrificed to simplicity.
- Same words should not be used for different meanings.

*Alaska’s Constitutional Convention*, Vic Fischer, p. 60 (1975).

Since the Style and Drafting Committee adopted of the guideline that same words should not be used for different meanings, it seems to follow that the same meaning should not be derived from different words (e.g., “establish” does not mean the same thing as “incorporate”).

The entire local government article of Alaska’s constitution was originally comprised of only 833 words. (Today, Article X is comprised of only 784 words following a 1972 amendment deleting a portion of Section 4.) Given the evidence presented above concerning the rules of statutory construction and the formal guidelines for drafting the Constitution of the State of Alaska, there is no basis for arguing that provisions found within Section 3 are superfluous.

- Section 15, in effect, requires the Legislature to enact laws providing for the integration of special service districts with a newly formed borough government.

## **Part 2. Express Constitutional Authorities**

In addition to several duties, Article X of the constitution grants the Legislature specific authority (without imposing an obligation) for the exercise of a number of other powers relating to boroughs. Specifically:

- Section 5 provides that the Legislature may enact provisions concerning the establishment, alteration, or abolition of service areas within organized boroughs by the assembly;
- Section 6 states that the Legislature may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough;<sup>8</sup>

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<sup>8</sup> This particular provision found in the second sentence of Article X, Section 6 is often misconstrued in two fundamental respects. First, it is sometimes misinterpreted as imposing a duty of the Legislature. The preceding sentence of Section 6 indeed imposes an obligation on the Legislature. Clearly, however, the language of the second sentence grants the Legislature power to act in the fashion described without imposing a duty on it to do so.

Secondly, the provision is often mischaracterized as one in which the Legislature is rendered the assembly of the unorganized borough. A careful reading of the sentence clearly shows that this is not the case. The constitutional provision in question merely provides that the Legislature “may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.” Giving one the power to act as another is not the same as being that other. For example, AS 29.35.480 gives the assembly of a first class borough the authority to exercise in a service area any power granted to the council of a first class city by law. AS 29.35.480 certainly does not mean that the assembly of a first class borough becomes a city council of a service area.

Moreover, the notion that the Alaska Legislature should serve as the assembly of the unorganized borough contravenes the fundamental principles of representative government. An assembly is the governing body of a borough (Article X, Section 4). Today, Alaska’s unorganized borough is inhabited by about 13% of all Alaskans. Thus, 87% of the legislators (52 of 60) are elected by residents of organized boroughs. A circumstance where 87% of a governing body of a particular borough is elected by residents of other boroughs can hardly be construed as representative democracy. The extremes of such representation would actually be much greater if multiple unorganized boroughs had been created (as called for in the constitution) rather than a single residual unorganized borough.

The purpose of the second sentence of Article X, Section 6 is simple. The founders granted the Legislature express constitutional authority to exercise in an

- 1     ▪ Section 9 provides that the Legislature may enact laws concerning the
- 2       manner in which the qualified voters of a first class borough may adopt,
- 3       amend, or repeal a home rule charter;
- 4     ▪ Section 10 authorizes the Legislature to extend home rule to other boroughs;
- 5     ▪ Section 11, in effect, provides that the Legislature may restrict the legislative
- 6       powers of home rule boroughs;
- 7     ▪ Section 12 states that the Legislature may define in law how the Local
- 8       Boundary Commission implements its constitutional authority to “establish
- 9       procedures whereby boundaries may be adjusted by local action;” and
- 10    ▪ Section 13, in effect, authorizes the Legislature to limit the constitutional
- 11      authority of local governments to make agreements with any other local
- 12      government, with the State, or with the United States; it also allows the
- 13      Legislature to limit the authority of a city to transfer (or revoke the transfer)
- 14      any of the city’s powers or functions to the borough in which the city is
- 15      located.

### 17     **Part 3. Performance of Duties and Exercise of Authorities**

18  
19     With regard to the aforementioned constitutional imperatives and prerogatives,

20     the Legislature has enacted laws:

- 21       • providing standards for establishment of organized boroughs (AS
- 22         29.05.031; AS 29.05.100) and directing the Local Boundary Commission
- 23         to adopt additional standards for incorporation of boroughs (AS
- 24         44.33.812(a)(2)); however, standards for establishment of unorganized
- 25         boroughs have never been enacted;
- 26       • providing procedures for establishment of organized boroughs by local
- 27         action (AS 29.05.060 - 150), directing the Local Boundary Commission to
- 28         adopt additional procedures for borough incorporation (AS
- 29         44.33.812(a)(2)), creating the unorganized borough (AS 29.03.010), and
- 30         mandating the incorporation of eight specific regions as organized
- 31         boroughs (Chapter 52, SLA 1963); however, the Legislature has not
- 32         enacted general laws providing for incorporation of boroughs by legislative
- 33         review or for establishment of unorganized boroughs;
- 34       • classifying boroughs (AS 29.04.010 - 29.04.060);
- 35       • prescribing the powers and functions of boroughs (AS 29.35);

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unorganized borough any power or function exercised by an assembly in an organized borough merely to exempt such actions from the constitutional prohibition regarding local or special acts of the Legislature as set out in Article II, Section 19 of the constitution. In that respect, *Borough Government in Alaska*, p 41 notes, “By permitting the legislature to act as the borough assembly, the general prohibition against local legislation was overcome, and laws could be enacted for differential performance of functions in accordance with the requirements of different boroughs.”



- 1 • establishing methods by which boroughs may be organized (AS 29.05.060  
2 - 29.05.150), incorporated (AS 29.05.060 - 29.05.150), merged (AS  
3 29.06.090 - 29.06.170), consolidated (AS 29.06.090 - 29.06.170),  
4 reclassified (AS 29.04.050 - 29.04.060), and dissolved (AS 29.06.450 -  
5 29.06.530);
- 6 • establishing the composition of borough assemblies (AS 29.20.060 -  
7 29.20.080);
- 8 • providing for the performance of services in unorganized boroughs (AS  
9 04, Alcoholic Beverages; AS 05, Amusements and Sports; AS 09, Code  
10 Of Civil Procedure; AS 14, Education, Libraries, and Museums; AS 15,  
11 Elections; AS 16, Fish and Game; AS 19, Highways and Ferries; AS 23,  
12 Labor and Workers' Compensation; AS 29, Municipal Government; AS 30,  
13 Navigation, Harbors, and Shipping; AS 35, Public Buildings; Works, and  
14 Improvements; AS 38, Public Land; AS 40, Public Records and  
15 Recorders; AS 41, Public Resources; AS 43, Revenue and Taxation; AS  
16 44, State Government; AS 46, Water, Air, Energy, and Environmental  
17 Conservation; AS 47, Welfare, Social Services and Institutions);
- 18 • establishing the Local Boundary Commission (AS 44.33.810) and  
19 providing for its powers and duties (AS 44.33.812 - 44.33.828; AS  
20 29.04.040; AS 29.05.080 - 29.05.090; AS 29.06.040; AS 29.06.120 -  
21 29.06.130; AS 29.06.450; AS 29.06.490 – 29.06.500);
- 22 • establishing the Department of Community and Economic Development to  
23 advise and assist boroughs (and cities), review their activities, collect and  
24 publish local government information, and perform other duties (AS  
25 44.33.010 – 44.33.900);
- 26 • providing for the integration of special service districts with a newly formed  
27 borough government (AS 29.05.130 – 29.05.140);
- 28 • concerning the establishment, alteration, or abolition of service areas  
29 within organized boroughs (AS 29.35.450 – 29.35.490);
- 30 • addressing the manner in which voters of a first class borough may adopt,  
31 amend, or repeal a home rule charter (AS 29.10.010 – 29.10.100);
- 32 • extending home rule to other boroughs (AS 29.10.010);
- 33 • restricting the legislative powers of home rule boroughs (and/or cities) (AS  
34 01, General Provisions; AS 09, Code Of Civil Procedure; AS 14,  
35 Education, Libraries, and Museums; AS 15, Elections; AS 18, Health,  
36 Safety, and Housing; AS 19, Highways and Ferries; AS 21, Insurance; AS  
37 23, Labor and Workers' Compensation; AS 29, Municipal Government; AS  
38 30, Navigation, Harbors, and Shipping; AS 37, Public Finance; AS 38,  
39 Public Land; AS 39, Public Officers and Employees; AS 40, Public  
40 Records and Recorders; AS 41, Public Resources; AS 42, Public Utilities  
41 and Carriers; AS 43, Revenue and Taxation; AS 44, State Government;  
42 AS 45, Trade and Commerce; AS 46, Water, Air, Energy, and  
43 Environmental Conservation);
- 44 • regarding authority of local governments to make agreements with any  
45 other local government, with the State, or with the United States (AS  
46 29.35.010(13));

- regarding the authority of a city to transfer (or revoke the transfer) to the borough in which the city is located any of the city's powers or functions (AS 29.35.310).

The lack of standards and procedures for the establishment of unorganized boroughs, coupled with the absence of general law provisions for incorporation of organized boroughs by means other than local action, have had profound consequences on the development of local government in Alaska. Those matters are addressed in Section F of this chapter.

## **Section D. Role of the Local Boundary Commission Regarding Boroughs**

Part 1. Constitutional Origins of the Commission

Part 2. Duties Imposed by Legislature

Part 3. Express Discretionary Powers

Part 4. Implicit Constitutional Authority for Legislative Review Borough Incorporations

### **Part 1. Constitutional Origins of the Commission**

Among the 120 or so active State boards and commissions, the Local Boundary Commission is one of only five with origins in Alaska's constitution.<sup>9</sup> Article X, Section 12 of the constitution provides as follows:

**Section 12. Boundaries.** A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.

### **Part 2. Duties Imposed by Legislature**

Under general laws enacted by the Legislature, the Local Boundary Commission has been given the following duties relating to boroughs:

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<sup>9</sup> The four other boards with constitutional origins are the University of Alaska Board of Regents, Judicial Council, Commission of Judicial Conduct, and Redistricting Board.

- to act on petitions for incorporation of boroughs (AS 29.05.090 – 29.05.100);
- to judge petitions for merger of boroughs with other local governments (AS 29.06.120 - 29.06.130);
- to make determinations concerning petitions for consolidation of boroughs with other local governments (AS 29.06.120 - 29.06.130);
- to act on petitions for dissolution of boroughs (AS 29.06.490 – 29.06.500);
- to consider a local government boundary change, including borough annexation or detachment, requested of it by the legislature, the commissioner of community and economic development, or a political subdivision of the state (AS 44.33.812(a)(4));
- to conduct studies of local government boundary problems (AS 44.33.812(a)(1));
- to adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution (AS 44.33.812(a)(2)); and
- to establish procedures for annexation and detachment of territory by municipalities by local action that are in addition to the regulations governing annexation by local action adopted under AS 44.33.812 (AS 29.06.040(c)).

Additionally, as noted in Section A of this chapter, the Commission also has a duty under Chapter 53, SLA 2002 to conduct this review of the unorganized borough.

### **Part 3. Express Discretionary Powers**

In addition to the above duties, the Commission has certain discretionary powers expressly provided in statutory law. Specifically, the Commission may:

- conduct meetings and hearings to consider local government boundary changes and other matters related to local government boundary changes, including extensions of services by incorporated cities into contiguous areas and matters related to extension of services (AS 44.33.812(b)(1));
- on its own initiative, present to the legislature during the first 10 days of a regular session proposed local government boundary changes, including gradual extension of services of incorporated cities into contiguous areas upon a majority approval of the voters of the contiguous area to be annexed and transition schedules providing for total assimilation of the contiguous area and its full participation in the affairs of the incorporated city within a period not to exceed five years (AS 44.33.812(b)(2); (AS 29.06.040(a));
- consider, amend, and impose conditions on any proposed municipal boundary change. (AS 29.06.040(a)); and
- accept a proposed municipal boundary change if the commission determines that the proposed municipal boundary change, as amended or

1 conditioned if appropriate, meets applicable standards under the state  
2 constitution and commission regulations and is in the best interests of the  
3 state; otherwise, it must reject the proposed change. (AS 29.06.040(a)).  
4

#### 5 **Part 4. Implicit Constitutional Authority for Legislative Review** 6 **Borough Incorporations**

7  
8 In addition to the express constitutional and statutory duties and powers outlined  
9 in Parts 1 – 3 above, a number of local government experts and legal authorities  
10 hold the view that the Local Boundary Commission has implicit authority under  
11 Article X, Section 12 of Alaska's constitution to submit recommendations to the  
12 Legislature for the incorporation of particular boroughs. Such views are based  
13 on the interpretation that the phrase "local government boundary change" used in  
14 Article X, Section 12 is properly construed to include incorporation of local  
15 governments.  
16

17 Among the experts and authorities holding such views is Vic Fischer. Mr. Fischer  
18 was a delegate to Alaska's Constitutional Convention where he served as  
19 Secretary to the Committee on Local Government. His expertise in Alaska local  
20 government has been recognized by the Alaska Supreme Court (see *Keane v.*  
21 *Local Boundary Commission*, 893 P.2d 1239, 1242, 1243, 1244 (Alaska 1995);  
22 and *Mobil Oil Corporation v. Local Boundary Commission*, 518 P.2d 92, 98  
23 (Alaska 1974)).  
24

25 Mr. Fischer takes the view that, "The Local Boundary Commission has total  
26 authority to establish boroughs...subject to legislative veto, within the 45-day  
27 provision [of Article X, Section 12 of the Alaska constitution]." *Transcript of*  
28 *Review of Local Government Article of Alaska's Constitution*, Department of  
29 Community and Regional Affairs, page 14, February 13 and 14, 1996.  
30

31 Mr. Fischer's views are consistent with those reflected in the Minutes of 18<sup>th</sup>  
32 meeting of the Local Government Committee at the Constitutional Convention.  
33 The minutes of that meeting, held December 4, 1955, state as follows (emphasis  
34 added):  
35

36 The idea was advanced that boundaries be established by a separate  
37 local government boundary commission, vested with the power to hear  
38 petitions for establishment of boundaries or for boundary changes and  
39 which could undertake such on its own initiative. The legislature would be  
40 given the power to veto or revise any decisions of such a commission.  
41

42 When the Constitutional Convention delegates reviewed the Local Government  
43 Article on the convention floor, they made frequent reference to the Local  
44 Boundary Commission's role in establishing boroughs consistent with those  
45 described above in the minutes of the Committee on Local Government. For  
46 example, Delegate John Coghill made the following remarks on January 19,

1 1956 in the context of Article X, Section 3 of the constitution (*Proceedings of the*  
2 *Alaska Constitutional Convention*, p 2620) (emphasis added).

3  
4 COGHILL: Further on in Section 3, I would like to ask you, Mr. Rosswog, on  
5 line 6 of page 2, "Each borough shall embrace, to the maximum extent  
6 possible, an area and population with common interests." My question here is  
7 directed to you to find out what the Committee's thinking was as to boundary  
8 areas of local government. Could you give us any light on that as to the  
9 extent? I know that you have delegated the powers to a commission, but you  
10 have said that each borough shall embrace the maximum extent possible. I am  
11 thinking now of an area that has maybe five or six economic factors in it --  
12 would they come under one borough?

13  
14 After conferring with the State Attorney General's office, the initial members of  
15 the Alaska Local Boundary Commission (appointed November 1, 1959) shared  
16 the view that the Commission has the power to incorporate boroughs, subject to  
17 legislative veto. However, they declined to exercise such authority to avoid  
18 litigation. The Commission noted as follows in that respect in its report to the  
19 1960 Legislature:

20  
21 ... there would appear to be no objection (to) the Commission  
22 recommending in this or any other session, proposed original  
23 boundaries or boundary changes, which would become effective unless  
24 negated within forty-five days or at the end of the legislative session  
25 during which such proposals as made, whichever is earlier.

26  
27 But, to avoid a needless law-suit by any citizen objecting to the  
28 formation of a borough under the above procedures, and to give stability  
29 to any unit so created, it is suggested that any recommendation of the  
30 Commission as to initial boundaries be adopted by the usual legislative  
31 processes of enacting a statute. The Commission is agreed and  
32 impressed with the Attorney General's chain of reasoning, and they are  
33 convinced it would prevail in a court of law, particularly in view of the  
34 fact that the creating of boroughs is in the nature of a political  
35 undertaking, over which the courts are not readily disposed to take  
36 jurisdiction or to otherwise set aside. However, as stated above, formal  
37 legislation is the safest course and for this reason is strongly advocated.

38  
39 Notwithstanding the predilection of the initial Boundary Commission to avoid  
40 litigation, the powers of the Commission have been tested in the courts on many  
41 occasions over the past forty-four years. The Alaska Supreme Court has  
42 consistently acknowledged the special purpose and broad powers of the  
43 Commission concerning the creation and alteration of local governments in  
44 Alaska. The Supreme Court has invariably deferred to the Commission  
45 concerning matters involving expertise relating to complex subject matters or  
46 matters of fundamental policy formulation, as long as the Commission has a

1 reasonable basis for its actions. See: *Fairview Public Utility Dist. No. One v. City*  
2 *of Anchorage*, 368 P.2d 540, (Alaska 1962); *Oesau v. City of Dillingham*, 439  
3 P.2d 180, (Alaska 1968); *Mobil Oil Corporation v. Local Boundary Commission*,  
4 518 P.2d 92, (Alaska 1974); *Valleys Borough Support v. Local Boundary*  
5 *Commission*, 863 P.2d 232, (Alaska 1993); *Lake and Peninsula Borough v. Local*  
6 *Boundary Commission*, 885 P.2d 1059, (Alaska 1994); *Keane v. Local Boundary*,  
7 893 P.2d. 1239, (Alaska 1995); *Yakutat v. Local Boundary Commission*, 900  
8 P.2d 721, (Alaska 1995).

9  
10 Moreover, the State Attorney General's office noted in a 1991 memorandum of  
11 opinion that, "In our view 'changing local boundary lines' includes not only  
12 annexation or detachment proceedings but also incorporation proceedings." In  
13 the same opinion, the Attorney General's office observed:

14  
15 We have often opined as to the framers (sic) intent that boundary  
16 formation and adjustment be from a statewide perspective and that  
17 the role of the LBC is to facilitate the framer's (sic) goals. See 1990  
18 Inf. Op. Att'y Gen. (March 21; 663-90-0307) 1986 Inf. Op. Att'y  
19 Gen. (Jan. 14; 366-234-86); 1972 Inf. Op. Att'y Gen (R. Garnett,  
20 Feb. 24).

21  
22 1991 Inf. Op. Att'y Gen. (Feb. 15; 663-91-0212).

23  
24 Chapter 53, SLA 2002 also seems to implicitly recognize the Commission's  
25 constitutional authority to formally recommend incorporation of boroughs  
26 pursuant to Article X, Section 12 of Alaska's constitution. As noted above, the  
27 last sentence of the legislative directive for the Commission to undertake this  
28 review of the unorganized borough states, "No portion of the report under this  
29 section constitutes a Local Boundary Commission proposal for purposes of art.  
30 X, sec. 12, Constitution of the State of Alaska."

31  
32 Notwithstanding its authority to do so, the Commission has never exercised its  
33 implicit constitutional authority under Article X, Section 12 to recommend  
34 incorporation of a particular region as a borough. It has, however, on some 120  
35 occasions since statehood, submitted recommendations pursuant to Article X,  
36 Section 12 for the "incorporation" of areas into existing city and borough  
37 governments through annexation and for other municipal boundary changes.  
38

## 39 **Section E. Development of Borough Government in** 40 **Alaska**

41  
42 Formal authority to establish municipal governments of any kind in Alaska was  
43 not granted by Congress until 1900. Even then, the authority was limited to city  
44 governments.  
45

In 1912, Congress incorporated Alaska as a territory. In doing so, it extended restrictive home rule status to Alaska. One of the restrictions – which was seen as a concession to outside mining, timber, and fishing interests in Alaska – prohibited the Alaska Territorial Legislature from establishing counties without the specific authority of Congress. As noted in Section B of this chapter, that circumstance actually worked to the later advantage of Alaska when the founders designed the local government structure for Alaska as a state.

In 1935, the Territorial Legislature authorized additional types of local governments – small independent school districts and small public utility districts. In doing so, it began a course long-practiced in other parts of the country by providing for the establishment of small single-purpose or limited-purpose governmental units with overlapping boundaries.

The following is a brief summary of activities beginning with the Constitutional Convention that shaped the regional governmental structure in Alaska today.  
NOTE TO LBC: THE FOLLOWING ACCOUNT IS INCOMPLETE – FURTHER DETAILS WILL BE PROVIDED IN THE FINAL REPORT.

1955	<ul style="list-style-type: none"> <li>Alaska Constitutional Convention convened.</li> </ul>
1956	<ul style="list-style-type: none"> <li>Constitutional Convention delegates adopted constitution (2/5/56). Delegates decided that “although voluntary incorporation would be preferable, organized boroughs could be created without the approval of the people within the area.” (<i>Borough Government in Alaska</i>, p 61).</li> <li>Alaska voters ratified the constitution (4/24/56)</li> </ul>
1959	<ul style="list-style-type: none"> <li>Alaska’s constitution took effect (1/2/59). Art. X, § 3 requires legislature to determine procedures and standards for establishment of organized and unorganized boroughs. Art. X, § 15 requires legislature to provide for integration of independent school districts and public utility districts into boroughs.</li> </ul>
1961	<ul style="list-style-type: none"> <li>Legislature adopts standards and procedures for incorporation of boroughs by local action. The new law also provides that independent school districts and public utility districts must be integrated by July 1, 1963.</li> </ul>
1962	<ul style="list-style-type: none"> <li>Bristol Bay Borough incorporates</li> </ul>
1963	<ul style="list-style-type: none"> <li>LBC rejects proposal to incorporate 1,400 square mile “Homer-Ninilchik Borough.”</li> <li>Residents of Kenai-Soldotna area withdraw petition to incorporate a borough roughly the size of the Kenai Recording District (approximately 2,500 square miles) after LBC rejects Homer-Ninilchik Borough proposal.</li> <li>Representative Rader introduces House Bill 90 mandating incorporation of nine regions into boroughs. Boundaries are based on House election districts. The nine regions encompass all independent school districts.</li> <li>House Bill 90 is enacted by a single vote in the Senate after it is</li> </ul>

	<p>amended to exclude the Lynn Canal Icy Straits Election District. The bill extended the deadline for integration of independent school districts into borough to July 1, 1964. It requires boroughs to form in the following regions:</p> <ol style="list-style-type: none"> <li>1. Ketchikan,</li> <li>2. Sitka,</li> <li>3. Juneau,</li> <li>4. Kodiak Island,</li> <li>5. Kenai Peninsula,</li> <li>6. Anchorage,</li> <li>7. Matanuska-Susitna valleys, and</li> <li>8. Fairbanks.</li> </ol>
1964	<ul style="list-style-type: none"> <li>▪ LBC approved a proposal to form a first class borough in Haines in March. The proposal was rejected by the voters.</li> <li>▪ The Haines Independent School District was dissolved on July 1, 1964, in accordance with the provisions of the 1963 Mandatory Borough Act.</li> <li>▪ Commissioner of the Department of Education formed the Haines-Port Chilkoot Special School District under an obscure statutory provision in August of 1964.</li> </ul>
1966	<ul style="list-style-type: none"> <li>▪ Legislature repealed authority for operation of special school districts under which the Haines-Port Chilkoot Special School District had formed. Notwithstanding, the district continued to operate.</li> </ul>
1967	<ul style="list-style-type: none"> <li>▪ In the spring, LBC approved a petition to incorporate a second class borough in Haines. However, voters rejected the proposal.</li> <li>▪ In October, the State Attorney General advised the Department of Education to discontinue funding for the Haines-Port Chilkoot Special School District because it had no legal basis.</li> <li>▪ Following the action by the State Attorney General's office, the City of Haines and second class City of Port Chilkoot each organized city school districts. The State school district served students outside the two cities. Thus, three school districts served a total of 346 students in the Haines area in 1967.</li> <li>▪ A third proposal to form a borough – again, a second class borough – was prepared shortly after voters rejected the second proposal in October of 1967. That proposal was also defeated by the voters.</li> </ul>
1968	<ul style="list-style-type: none"> <li>▪ Legislature enacts laws establishing a third class borough.</li> <li>▪ In May, voters in Haines petitioned to incorporate a third class borough. The LBC subsequently approved the proposal. Voters subsequently approved the proposal. The Borough was incorporated on August 29, 1968.</li> </ul>
1970	<ul style="list-style-type: none"> <li>▪ The City of Juneau, City of Douglas, and the Greater Juneau Area</li> </ul>



	Borough unify into a borough named the City and Borough of Juneau.
1971	▪ The City of Sitka and Greater Sitka Area Borough unify into a borough named the City and Borough of Sitka
1972	▪ The North Slope Borough incorporated.
1974	▪ Alaska Legislature detaches Eagle River-Chugiak from the Greater Anchorage Area Borough. Litigation later reverses the action on constitutional grounds
1975	▪ The City of Anchorage, City of Girdwood, City of Glen Alps, and Greater Anchorage Area Borough unify into a borough named the Municipality of Anchorage
1986	▪ Northwest Arctic Borough incorporated
1989	▪ Lake and Peninsula Borough incorporated
1990	▪ Denali Borough incorporated.
1992	▪ City and Borough of Yakutat incorporated
2002	▪ City of Haines and Haines Borough consolidate into a new borough

## Section F. Policy Issues Relating to Borough Incorporation

Part 1. Lack of Standards for Unorganized Boroughs Hinders Development of Borough Government

Part 2. Single Residual Unorganized Borough Fails Constitutional Requirements

Part 3. Current System Treats Alaskans Disparately Without a Rational Basis

Part 4. Equity is an Important Reason to Promote Boroughs but Boroughs are Good Public Policy for Many Other Reasons

Part 5. Boroughs are Suitable to Rural Areas as well as Urban Areas

Part 6. Voluntary Borough Formation is Appealing but is Ineffective in terms of Promoting Boroughs

Part 7. The Constitution Encourages Borough Formation but State Laws Impede the Creation of Boroughs

Part 8. Alaska Alone has Unorganized Regions

### Introduction.

For more than forty years, an array of public interest groups, local government experts, State and local officials, and citizens have pointed out serious shortcomings in the manner in which the borough concept has been implemented in Alaska. For example, a contemporary publication of the Alaska Municipal League declares plainly:

The state has failed to continue the evolution of local government directed by the Constitution. Article X of the Constitution states,

1 “The entire state shall be divided into boroughs, organized and  
2 unorganized.”

3  
4 *Municipal Government in Alaska – White Paper*, Alaska Municipal League.

5  
6 Two years ago, the Local Boundary Commission formally stated that it “considers  
7 the lack of a strong State policy promoting the extension of borough government  
8 to be the most pressing ‘local government boundary problem’ facing Alaska.”  
9 *The Need to Reform State Laws Concerning Borough Incorporation and*  
10 *Annexation*, Local Boundary Commission, p. 3 (January 2001).

11  
12 A review of the shortcomings regarding the manner in which the borough form of  
13 government has been implemented is certainly relevant in terms of future  
14 deliberations by the Legislature regarding this report of the Commission called for  
15 by Chapter 53, SLA 2002. As noted in Section D-2 of this chapter, the Local  
16 Boundary Commission has a duty to make studies of local government boundary  
17 problems. In that respect, the Commission takes this opportunity here to present  
18 fundamental public policy issues relating to the extension of borough  
19 government. Important misconceptions about borough government are also  
20 addressed.

## 21 22 **Part 1. Lack of Standards for Unorganized Boroughs Hinders** 23 **Development of Borough Government**

24  
25 As noted in Section B of this chapter, the founders made provisions for  
26 unorganized boroughs because they perceived that, at least initially, some  
27 regions of Alaska would not be ready or suited for organized borough status due  
28 to the lack of fiscal and administrative capacity to support areawide functions.  
29 Thus, fiscal and administrative ability, logically, should be the distinguishing  
30 characteristic between organized boroughs and unorganized boroughs.

31  
32 As noted in Section C of this chapter, the Legislature has not enacted standards  
33 and procedures for the establishment of unorganized boroughs. The lack of  
34 standards and procedures for the establishment of unorganized boroughs  
35 precludes a meaningful determination whether an unorganized area has attained  
36 the fiscal and administrative capacity to support areawide functions. If such  
37 standards existed, an unorganized area could be signaled to form an organized  
38 borough when it achieved the administrative and fiscal capacity to support  
39 areawide functions.

40  
41 The lack of effective standards and procedures triggering the incorporation of  
42 organized boroughs led John Rader, Alaska’s first State Attorney General and a  
43 former member of the State House of Representatives, to the conclusion in 1963  
44 that “the greatest unresolved political problem of the State was the matter of  
45 boroughs.” *The Metropolitan Experiment in Alaska: A Study of Borough*  
46 *Government*, Ronald C. Cease and Jerome R. Saroff; eds., page 93 (1968).

1  
2 For the past 42 years, with the single exception of the 1963 Mandatory Borough  
3 Act, the Legislature has delegated to local citizens the decision as to whether  
4 boroughs should be organized. Given the lack of incentives to form boroughs, it  
5 is not surprising that few regions have chosen to voluntarily take on the  
6 responsibility for borough government.

7  
8 The 1963 Mandatory Borough Act was the product of a bipartisan legislative  
9 effort that was supported by Governor Egan. John Rader, author of the 1963  
10 Mandatory Borough Act, characterized the impetus for the Act as follows:  
11

12 In striving to form viable units of local self-government, the people of  
13 Alaska have used the courts, the executive branch of their Territorial  
14 Government, and the local subdivisions themselves. It was only after a  
15 series of repeated failures that in 1963 the State legislature finally  
16 exercised the authority which had previously been delegated to others.

17  
18 *Id.*, page 81.  
19

20 Mr. Rader's statement is perhaps overly broad in the sense that the 1963  
21 Mandatory Borough Act applied only to eight particular regions of Alaska. An  
22 informal understanding had reportedly been reached among legislators in 1963  
23 that subsequent legislative enactments would be made to compel other areas to  
24 form boroughs.<sup>10</sup> However, the State has never since exercised such authority.  
25 Instead, the State returned to its 1961 policy which Mr. Rader characterized as a  
26 failed strategy for formation of boroughs.

27  
28 Victor Fischer, constitutional convention delegate and Secretary to the  
29 Convention's Committee on Local Government reflected in 1987 that, "Despite  
30 the constitutional convention's emphasis on state leadership in establishing the  
31 borough system, governors and legislatures have been reluctant to create  
32 boroughs, largely because of frequent local opposition to establishment of  
33 another level of government." *Alaska State Government and Politics*, Gerald A.  
34 McBeath and Thomas A. Morehouse; eds., page 44 (1987).  
35

## 36 **Part 2. Single Residual Unorganized Borough Fails** 37 **Constitutional Requirements** 38

39 To fulfill the constitutional requirement for the division of the entire state into  
40 organized and unorganized boroughs, the Local Boundary Commission

---

<sup>10</sup> Clem Tillion, a member of the 1963 State House of Representatives, indicated that the 1963 Mandatory Borough Act was approved by the Legislature with the understanding that other unorganized areas would be compelled to organize by subsequent legislatures. (Personal communication with Local Boundary Commission staff, April 28, 2000).

1 recommended in 1960 that the Legislature give the Commission a mandate to  
2 undertake the task. However, the recommendation was formally rejected by the  
3 Legislature.

4  
5 Instead, in 1961, the Legislature implemented Article X, Section 3 by enacting a  
6 law providing that all of Alaska not within an organized borough would constitute  
7 a single unorganized borough. That law remains in effect today.

8  
9 From its inception, the unorganized borough has embraced an area and  
10 population with highly diverse interests rather than the maximum common  
11 interests required by the constitution. The diversity of the social, cultural,  
12 economic, transportation, and geographic characteristics of the unorganized  
13 borough is remarkable. As currently configured, the unorganized borough  
14 contains an estimated 374,843 square miles – 57% of the total area of Alaska. It  
15 ranges in a non-contiguous manner from the southernmost tip of Alaska to  
16 approximately 150 miles above the Arctic Circle. The unorganized borough also  
17 extends in a non-contiguous manner from the easternmost point in Alaska (at  
18 Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands.

19  
20 The lack of formal standards and procedures for the establishment of  
21 unorganized boroughs noted in Section C-1 of this chapter allowed the creation  
22 of the single residual unorganized borough. Such a borough lacks the requisite  
23 common interests. Compliance with the common interests clause of Article X,  
24 Section 3 of Alaska's constitution could be achieved with respect to the  
25 unorganized borough if AS 29.03.010 were amended to divide the single  
26 unorganized borough into multiple unorganized boroughs formed along natural  
27 regions in accordance with standards and procedures established in law.

### 28 29 **Part 3. Current System Treats Alaskans Disparately Without a** 30 **Rational Basis**

31  
32 Article I, Section 1 of Alaska's constitution is often referred to as the "equal  
33 protection clause." However, it also requires equal responsibility among  
34 Alaska's citizens. Article I, Section 1 provides as follows (emphasis added):

35  
36 This constitution is dedicated to the principles that all persons have  
37 a natural right to life, liberty, the pursuit of happiness, and the  
38 enjoyment of the rewards of their own industry; that all persons are  
39 equal and entitled to equal rights, opportunities, and protection  
40 under the law; and that all persons have corresponding obligations  
41 to the people and to the State.

42  
43 Residents of the unorganized borough outside home rule and first class cities  
44 have no obligation under State law to support fundamental services such as  
45 public education and platting. Those areas comprise approximately two-thirds of  
46 the population of the unorganized borough.

1  
2 A 1991 study of Alaska's education foundation funding formula raised basic  
3 public policy concerns stemming from the absence of local responsibility:

4 Another serious drawback with full state funding is that it provides no  
5 incentive for schools to reduce costs when they can do so without  
6 reducing the quality of education. Local taxpayers elect local school  
7 boards, mayors, and assembly members who make decisions about  
8 school budgets. If local taxpayers pay the same minimum amount for  
9 education regardless of the size of their school district's budget – as is the  
10 case with the current Alaska required local effort provisions – there is no  
11 incentive for schools to reduce costs.

12 *Education Equity and Taxpayer Equity: A Review of the Alaska Public School*  
13 *Foundation Funding Program*, Matthew Berman and Eric Larson, Institute of  
14 Social and Economic Research, University of Alaska, page 89 (1991).

15 In contrast to residents served by regional educational attendance areas, all  
16 other Alaskans are legally obliged to provide financial support for local public  
17 education. Thus, Alaskans living in the state's sixteen organized boroughs and  
18 eighteen of the ninety-seven city governments in the unorganized borough have  
19 financial responsibility for operation of local schools.

20  
21 The required local contributions of municipal school districts directly offsets  
22 education funding that the State would otherwise be obligated to provide to those  
23 municipal school districts. In contrast, the State has chosen to bear the burden  
24 for fundamental services for approximately two-thirds of the population of the  
25 unorganized borough, again, without regard for local fiscal capacity or human  
26 resources. This disparate treatment of Alaskans lacks a rational basis.

27  
28 Alaska's "Task Force on Governmental Roles", established by the 1991  
29 Legislature to define Federal, State, and local relationships in the delivery of  
30 public services took the position that "the inequity in tax burden between  
31 residents of municipalities and residents of the unorganized borough is better  
32 addressed via state fiscal policies (taxes, shared revenue programs, education  
33 foundation funding and municipal grants) than by imposing areawide government  
34 on people who do not want it." *Task Force on Governmental Roles – Final*  
35 *Report*, Governor's Office of Management and Budget and the Alaska Municipal  
36 League, page 15 (July 10, 1992).

37  
38 There were numerous attempts to levy taxes on unorganized areas in the years  
39 following the report of the Task Force. However, every attempt met intense  
40 opposition from residents of unorganized areas and none was implemented.

41  
42 In a 1981 study of service delivery in the unorganized borough by the former  
43 Alaska Department of Community and Regional Affairs, Dr. John J. Kirlin  
44 characterized the situation as follows:

45 . . . the present system encourages dependence. Inhabitants of the  
46 unorganized borough are encouraged to be supplicants and clients of

1 service-delivery structures, and largely spectators upon the political life of  
2 the State. They are not citizens effectively participating in the governance  
3 of the policy. Moreover, this system is not supportive of native cultures  
4 and effectively requires natives to submerge or abandon traditional  
5 cultural values in order to participate in the State's politics.

6  
7 *Problems and Possibilities for Service Delivery and Government in the Alaska*  
8 *Unorganized Borough*, Alaska Department of Community and Regional Affairs,  
9 page 54 (September 1981).

10  
11 Conflict clearly exists between the circumstances described here and the  
12 principles of Article I, Section 1 of Alaska's constitution. Approximately one in  
13 every twelve Alaskans receives fundamental public services at no cost, *without*  
14 *regard to fiscal capacity*, while all others are compelled to pay for the same  
15 services. The previously noted 1991 Task Force on Governmental Roles  
16 reported that, "The inequity in tax burden between residents of first class cities  
17 and general law boroughs and those residing in unorganized areas is a perennial  
18 area of conflict in Alaska politics."

#### 19 20 **Part 4. Equity is an Important Reason to Promote Boroughs but** 21 **Boroughs are Good Public Policy for Many Other Reasons**

22  
23 Alaska's Constitution promotes boroughs as the cornerstone for the efficient and  
24 effective delivery of municipal services throughout Alaska. The Alaska Supreme  
25 Court interprets Article X, Section 1 as encouraging the creation of borough  
26 governments. *Mobil Oil Corporation v. Local Boundary Commission, supra*, 101.

27  
28 Boroughs benefit the State of Alaska and local areas in many ways including:  
29 

- 30 ■ enhanced service delivery through greater economies of scale,
- 31 ■ ability to provide financial support for fundamental services and facilities,
- 32 ■ greater capacity for economic development,
- 33 ■ power to address fundamental social services and public safety needs on a
- 34 regional basis, and
- 35 ■ greater local control.

36 These advantages of boroughs are addressed in subparts (a)-(e) below.

#### 37 38 **Subpart (a). Boroughs Provide Greater Economies of Scale for** 39 **Service Delivery.**

40  
41 The Alaska Municipal League characterizes service delivery in the unorganized  
42 borough as the exact opposite of what was intended by the constitution. It  
43 indicates as follows:  
44

1 Article X of the Constitution also states, "The purpose of this article  
2 is to provide for maximum local self government with a minimum of  
3 local government units." In the Unorganized Borough the opposite  
4 is true. There is currently a minimum of local self-government with  
5 a maximum of local government units.  
6

7 *Municipal Government in Alaska – White Paper*, Alaska Municipal League.  
8

9 Organized boroughs were intended to be the keystone for the delivery of efficient  
10 and effective municipal services. They deliver fundamental services such as  
11 education and platting on an areawide basis. In contrast, education services in  
12 the unorganized borough are delivered in a highly fragmented manner through a  
13 combination of service areas and cities.  
14

15 For example, each organized borough comprises a single school district. Yet,  
16 the lone unorganized borough encompasses thirty-seven different school districts  
17 – more than twice the number in all organized boroughs combined. The  
18 unorganized borough has just thirteen percent of Alaska's population, yet it  
19 contains seventy percent of the school districts in the state. If the state were  
20 organized along the model borough boundaries defined by 3 AAC 110.990(9),  
21 the number of school districts serving the area now within the unorganized  
22 borough would be reduced by more than 50%.  
23

24 Based on the 2001-2002 enrollment figures, thirteen of the thirty-seven school  
25 districts in the unorganized borough (35%) have fewer than 250 students. A 250  
26 student threshold was established by the State as the floor seventeen years ago  
27 for new school districts (AS 14.12.025). Moreover, one-third of the school  
28 districts in the unorganized borough required waivers for FY 2000 from the State  
29 Board of Education regarding the requirement that at least 65 percent of  
30 operating funds must be budgeted for instruction.  
31

32 In organized boroughs, citizens tend to streamline municipal government through  
33 unification or consolidation. In 1970, half of the people who lived in organized  
34 boroughs also lived in city governments. Today, the figure stands at just  
35 seventeen percent. In October 2002, voters in Haines were the latest to combine  
36 their local governments when voters approved consolidation of the City of Haines  
37 and the Haines Borough.  
38

39 In contrast, more than three-quarters of unorganized borough residents live in  
40 city governments where no regional municipal structure is available. Here again,  
41 with only 13% of the state's population, the unorganized borough has a  
42 disproportionately high number (67%) of the total city governments in Alaska.  
43

44 The Alaska Municipal League publication referred to earlier offers the following  
45 characterization of the manner in which services are delivered in the unorganized  
46 borough:

1 Local services are currently provided by the state and a patchwork of over  
2 400 separate municipal governments, non-profit corporations, regional  
3 school attendance areas, tribal governments, etc. Current service delivery  
4 is neither inexpensive or efficient, due to the lack of coordinated service  
5 delivery. Therefore, borough government would not be new and could be  
6 less expensive and more efficient than the "system" now in place.

7 In a 1981 study of the unorganized borough by the former Department of  
8 Community and Regional Affairs, Dr. John J. Kirlin characterized the structure for  
9 service delivery in the unorganized borough as follows:

10 To assert that the present situation is a "worst case" scenario is not  
11 comforting to those seeking to make this system effective, but it may well  
12 be accurate. The label is warranted as much for the incapacity for future  
13 development of the present system or for its current dysfunctions. This  
14 system has extremely limited capacity to develop and implement policies;  
15 it has even less capacity to "learn" (that is, to discern preferable  
16 institutions and policies) and to change. Moreover, the very existence of  
17 this complex, jury-rigged non-system provides disincentives to change,  
18 including decreases in state and federal funding if incorporation occurs.  
19 The present system is also apparently expensive to operate and does not  
20 succeed in delivery of needed services to many inhabitants of the  
21 unorganized borough. Alternative systems may not be less expensive,  
22 but the present situation can hardly be defended as economical.

23 *Problems and Possibilities for Service Delivery and Government in the Alaska*  
24 *Unorganized Borough*, supra, page 54.

25  
26 In terms of the natural evolution of local governments and the constitutional  
27 policy of minimum numbers of local governments, it is noteworthy that the 1991  
28 Task Force on Governmental Roles endorsed the unification and consolidation of  
29 cities and organized boroughs "wherever possible to provide for more efficient  
30 and cost-effective service delivery." *Task Force on Governmental Roles – Final*  
31 *Report*, supra, page 15.

32  
33 The extension of borough government to unorganized areas of Alaska would  
34 enable residents of those areas to approach public policy issues and service  
35 delivery on a regional basis. Until that happens state government's efficacy in  
36 attempting to meet the public service needs of the over two hundred communities  
37 in the unorganized borough will be poor, at best. If the State is ever going to get  
38 out of the business of trying to provide what are essentially local government  
39 services, this evolutionary process must move forward.

40  
41 **Subpart (b). Boroughs increase opportunity to provide financial**  
42 **support for fundamental services and facilities.**  
43

44 A borough offers the ability to provide funding for fundamental regional services  
45 such as schools. Some suggest that the \$645,468,498 allocated by the State of  
46 Alaska in Education Foundation Program financial aid during Fiscal Year 2002  
47 for 134,358 students was inadequate. As the Department of Education noted in



1 a 2001 report to the Legislature on education funding, municipal school districts  
2 have the legal capacity to supplement state funding for education:

3  
4 The consumer price index for Anchorage has risen approximately  
5 30% from 1990 to 1999. The January-to-January index rose  
6 29.57% and the July-to-July index rose 30.7% in ten years.  
7 Between 1990 and 1999, the legislature has increased the base  
8 foundation funding formula approximately 5%. Many school districts  
9 have had to absorb the effects of the additional 25% of inflation.  
10 Many municipalities have increased the local contribution to offset  
11 the effects.

12  
13 Increasing the base student allotment by the additional 25%  
14 inflation factor would result in an increase of \$985, or a revised  
15 student allotment of \$4,925. If the base student allotment were  
16 \$4,925, overall state foundation aid would increase by more than  
17 \$200 million.

18  
19 The FY2002 foundation program budget request is \$665 million to  
20 educate an estimated 133,300 children statewide. In FY2001,  
21 Alaska spent \$664 million to inflation proof the permanent fund. It is  
22 estimated in FY2002 Alaska will spend \$714 million to inflation  
23 proof the permanent fund. In FY2002, Alaska will spend  
24 approximately 7.4% or \$49 million dollars more to inflation proof the  
25 permanent fund than it will spend on the state's 133,300 children's  
26 K-12 education.

27  
28 *Alaska's Public School Funding Formula: A Report to the Alaska State*  
29 *Legislature*, Department of Education and Early Development, page 11, (January  
30 15, 2001).

31  
32 As the Governor and Legislature continue to struggle with declining State  
33 revenues and a growing population, the perceived disparity between the State's  
34 ability to fund services and the need for services may become much greater in  
35 the foreseeable future.

36  
37 Perceived shortfalls for operation of schools and other fundamental services can  
38 be addressed by borough governments. In contrast, regional educational  
39 attendance areas lack authority to levy taxes.

#### 40 41 **Subpart (c). Boroughs are an Economic Development Tool.**

42  
43 Urban and rural boroughs in Alaska routinely engage in successful economic  
44 development activities. For example, the Haines Borough is currently exploring  
45 ways in which it might assist the local commercial fishing industry following the  
46 recent announcement by Wards Cove Packing Company that it is closing its

1 Alaska salmon operations. In the Haines Borough, that means the closure of the  
2 Excursion Inlet processing plant and former cannery at Letnikof Cove.

3  
4 Haines gillnetters recently passed a resolution asking the Haines Borough to  
5 consider buying Wards Cove Packing Company's former cannery at Letnikof  
6 Cove for use as a base of operations for the fleet. The Haines Borough  
7 economic development director is exploring other ways and means of assisting  
8 the industry. One Haines Borough Assembly member recently committed that,  
9 "The borough isn't going to sit back and do nothing. The assembly is very  
10 interested in keeping Excursion Inlet and the Letnikof property to benefit the  
11 fisheries."

12  
13 A study conducted in 1999 concerning fisheries in the Bristol Bay region stressed  
14 that "... borough governments in rural Alaska are often the largest employer and  
15 serve as the economic engine for the area." *Impacts of the 1997-1998 Bristol*  
16 *Bay Fishing Disasters*, Northern Economics, Inc., in association with KEA  
17 Environmental Inc., and HDR Alaska, Inc., page ES-4 (June 1999).

18  
19 The Lake and Peninsula Borough describes its economic development activities  
20 as follows:

21       The Borough provides a variety of planning functions related to  
22       community and economic development. Such functions include grant  
23       writing and management, technical assistance on local government and  
24       development issues, general assistance in community planning,  
25       assistance with planning for and financing capital projects, and general  
26       economic development assistance; especially in the areas of fisheries  
27       and tourism.

28 Moreover, boroughs can also be effective advocates in the promotion of public  
29 policies that benefit local economies. For example, the Aleutians East Borough  
30 operates a Natural Resources Department to provide residents of the Borough  
31 with representation before various fishery advisory and management bodies. It  
32 also assists in the development and implementation of scientific efforts and  
33 regulations regarding commercial fisheries in the region.

34  
35 Organized boroughs also have the legal capacity to issue bonds to finance  
36 economic development projects such as roads, docks, and airports. The  
37 Aleutians East Borough has secured an estimated \$100 million for capital  
38 improvements since its incorporation in 1987. Local funds raised through the  
39 sale of bonds were leveraged to obtain State and Federal funding for a variety of  
40 capital projects in the Aleutians East Borough.

41  
42 Further, organized boroughs can also provide stable and predictable political  
43 environments that encourage economic development. For example, the  
44 incorporation of the Northwest Arctic Borough was a key to opening the Red Dog  
45 zinc mine. Today, the Red Dog mine provides hundreds of jobs to residents of  
46 the Northwest Arctic Borough.

1  
2 **Subpart (d). Boroughs can Address Fundamental Social**  
3 **Services and Public Safety Needs on a Regional Basis.**  
4

5 Boroughs offer the jurisdictional basis for addressing social and public safety  
6 issues. For example, there is no mechanism to provide for alcohol control on a  
7 regional basis in the unorganized borough. However, the law allows voters in  
8 organized boroughs to establish areawide alcohol controls.  
9

10 Another example concerns the National Flood Insurance Program regulated by  
11 the Federal Emergency Management Agency (FEMA). Participation in the  
12 National Flood Insurance Program requires passage of a municipal ordinance  
13 meeting FEMA Code of Federal Regulation standards. This requirement leaves  
14 residents and businesses in floodprone areas of the unorganized borough  
15 outside of cities ineligible for federal flood insurance. The lack of flood insurance  
16 coverage can have profound effects on unprotected areas.<sup>11</sup>  
17

18 The Alaska Commission on Rural Governance and Empowerment recognized  
19 the existence of "a range of land-based jurisdictional issues involving alcohol and  
20 other substance abuse control, economic development, environmental  
21 management and local governance innovation" in rural Alaska. *Final Report to*  
22 *the Governor*, Alaska Commission on Rural Governance and Empowerment,  
23 page 65 (June 1999).  
24

---

<sup>11</sup> FEMA's Public Assistance Policy Digest states:

A distinct reduction in disaster assistance is made for facilities located in the 100-year-floodplain, whether or not the applicant has the facility insured by a National Flood Insurance Program (NFIP) standard flood insurance policy.

This reduction is the maximum amount of insurance proceeds the applicant would have received if the facility had been fully covered by an NFIP standard flood insurance policy. It is made separately for buildings and contents up to a maximum of \$500,000 each. . . . If the insurance is not maintained, at the next disaster the facility will receive no assistance." (FEMA 321, October 2001)

Moreover, federal laws provide further that "...Provisions of the Flood Disaster Protection Act of 1973 prohibit approval of assistance for the Private Nonprofit unless the community agrees to participate in the NFIP within six months after the major disaster declaration date, and the required flood insurance is purchased." (Title 44, Ch. I, Part 206 - Subpart I Public Assistance Insurance Requirements Sec. 206.252 Insurance requirements for facilities damaged by flood.)

1 The Rural Governance Commission also concluded that, “The State of Alaska  
2 must invest in its future by ensuring that a strong, stable, and accountable unit of  
3 State government carries out rural development functions.” *Id.*, p. 72. While the  
4 Local Boundary Commission does not view that statement as an endorsement  
5 for borough government, boroughs certainly possess the characteristics listed.  
6

### 7 **Subpart (e). Boroughs Offer Greater Local Control.**

8

9 As a borough government, residents of a region have greater opportunity to  
10 make decisions at the local level. For example, one of the fundamental services  
11 required of boroughs is platting.  
12

13 Platting typically entails regulation and control of the (1) form, size, and other  
14 aspects of subdivision, dedications, and vacations of land; (2) dimensions and  
15 design of lots; (3) street width, arrangement, and rights-of-way, including  
16 requirements for public access to lots and installation of street paving, curbs,  
17 gutters, sidewalks, sewers, water lines, drainage, and other public utility facilities  
18 and improvements; and (4) dedication of streets, rights-of-way, public utility  
19 easements and areas considered necessary by the platting authority for other  
20 public uses.  
21

22 In the absence of a borough or city platting authority, the Alaska Department of  
23 Natural Resources is formally designated the platting authority under AS  
24 29.03.030. The exercise of such local responsibilities by the State seems to run  
25 counter to the principle of “maximum local participation and responsibility” called  
26 for in Article X, Section 6.  
27

28 It is difficult to reconcile arguments for self-determination when it comes to  
29 borough government with the willingness of most of the unorganized borough to  
30 rely on the State of Alaska to exercise control over local matters such as platting.  
31  
32

## 33 **Part 5. Boroughs are Suitable to Rural Areas as well as Urban** 34 **Areas**

35

36 Boroughs are adaptable to both rural and urban areas. *Mobil Oil Corporation v.*  
37 *Local Boundary Commission, supra*, 98. More than one-third of Alaska’s existing  
38 organized boroughs encompass areas that are *exclusively* rural (Bristol Bay,  
39 North Slope, Northwest Arctic, Aleutians East, Lake & Peninsula, and Yakutat).  
40 Another one-third of the boroughs include a number of rural communities (Kodiak  
41 Island, Kenai Peninsula, Haines, Ketchikan, Matanuska-Susitna, and Denali).  
42

43 Eben Hopson, first Mayor of the North Slope Borough, promoted borough  
44 formation as a means to advance the social and economic well-being of North  
45 Slope residents. Additionally, he saw the North Slope Borough as a means to  
46 preserve and protect the Inupiat culture and language and to establish local

1 control and self-determination. *Alaska's Urban and Rural Governments*, Thomas  
2 Morehouse, et al., page 144 (1984).

3  
4 A report prepared for the Alaska Federation of Natives in 1999 noted that  
5 boroughs have the capacity that other organizations lack to address particular  
6 needs of Native communities:

7  
8 In many Native communities, neither tribal government nor [city] status provides  
9 the powers or jurisdiction necessary to control land uses and protect subsistence  
10 fish and wildlife habitat in the much larger area surrounding the community. Also,  
11 developments in the surrounding area are outside the taxing powers of these local  
12 governments. One solution to these problems is to create an areawide or regional  
13 borough government under state law in order to bring these lands under local  
14 governmental jurisdiction. In addition to land use planning and control and tax  
15 powers, borough government also can localize control of public education. These  
16 are all mandatory powers of borough government.<sup>12</sup>

17  
18 The Alaska Municipal League takes the following view concerning the suitability  
19 of boroughs in predominantly Native areas:

20 Borough government can be a valuable tool for local self-determination  
21 that allows municipal and tribal government/organizations to co-exist  
22 successfully while resources are maximized.<sup>13</sup>

23 Several existing boroughs are inhabited predominantly by Natives. These  
24 include the Aleutians East Borough, Lake and Peninsula Borough, North Slope  
25 Borough, Northwest Arctic Borough, and the City and Borough of Yakutat. Other  
26 existing boroughs include significant Native populations. At present, one-third of  
27 the villages recognized by the Bureau of Indian Affairs are within organized  
28 boroughs.<sup>14</sup>

## 29 30 **Part 6. Voluntary Borough Formation is Appealing but is** 31 **Ineffective in terms of Promoting Boroughs**

32  
33 It has been widely recognized by experts in Alaska local government over the  
34 four decades since statehood that the local option (voluntary) approach to  
35 forming boroughs implemented in 1961 would be successful only in those few  
36 instances where local self-interests outweighed the significant disincentives to  
37 borough incorporation. Indeed, less than 4% of Alaskans live in boroughs that  
38 were formed since statehood under the local option approach. In contrast, nearly

---

<sup>12</sup> Cornell, Stephen, et al., *The Economic Resource Group, Inc.; and Victor Fischer and Thomas Morehouse, Institute of Social and Economic Research, University of Alaska, Anchorage. Achieving Alaska Native Self-Governance: Toward Implementation of the Alaska Natives Commission Report*, May 1999, page 44.

<sup>13</sup> Alaska Municipal League, *supra.*, page 4.

<sup>14</sup> Cornell, et al., *supra.*, Appendix A lists 223 BIA-recognized villages, 72 of which are within organized boroughs.

1 83% of Alaskans live in boroughs that were formed in a matter of a few months  
2 under the 1963 Mandatory Borough Act. The remaining 13% of Alaskans live in  
3 the unorganized borough. Stated differently, more than 96% of Alaskans live in  
4 areas that have not voluntarily initiated borough incorporation.

5  
6 Constitutional convention delegates expressed a preference for voluntary  
7 incorporation of boroughs. However, they also felt that the State should require  
8 areas to take on the burden of their own regional government where they can  
9 support it. The following reflects the views of the constitutional convention  
10 delegates regarding the establishment of boroughs.

11  
12 Convention delegates intended that the initial delineation of  
13 borough boundaries would take place only after thorough  
14 study of relevant economic, geographic, social, and political  
15 factors. The objective was to assure that boroughs would be  
16 so established that their boundaries would reflect statewide  
17 considerations as well as regional criteria and local interests.  
18 As indicated, the delegates did not believe that local  
19 determination of boundaries would likely achieve this  
20 objective.<sup>15</sup>

21  
22 The authority to organized a borough was also vested in the  
23 state, and there was initial discussion of whether boroughs  
24 should be established on a voluntary or compulsory basis.<sup>16</sup>  
25 It was decided that, although voluntary incorporation would  
26 be preferable, organized boroughs could be created without  
27 the approval of the people within the area. The rationale  
28 behind this position of unilateral state actions was that the  
29 borough:

30  
31 ... is more than just a unit of local government.  
32 It is also a unit for carrying out what otherwise  
33 got carried out as state functions; and when a  
34 certain area reaches a position where it can  
35 support certain services and act in its own  
36 behalf, it should take on the burden of its own  
37 government.<sup>17</sup>  
38

---

<sup>15</sup> (Footnote original). See *General Division*, p. 6; also, p. 38 above.

<sup>16</sup> (Footnote original). *Minutes*, 8<sup>th</sup> Meeting.

<sup>17</sup> (Footnote original). *Proceedings*, pp. 2673-74.

1 It was anticipated, however, that the legislature might  
2 choose to provide the local people with the opportunity to  
3 vote upon the issue in a referendum.<sup>18</sup>  
4

5 While compulsory establishment of organized boroughs was  
6 authorized, it was also expected that the state would offer  
7 adequate inducement to local people to accept organized  
8 borough status or even to initiate incorporation:  
9

10 We [the Local Government Committee]  
11 thought that at the state level it would be the  
12 policy as it has been in the past to offer certain  
13 inducements to them [boroughs] to organize  
14 ... [To] the extent that the benefits that the  
15 legislature sets up will offset the added cost to  
16 the people... it was our thought there would be  
17 enough inducement for them to organize and  
18 exercise home rule so that as time went on  
19 they would gradually all become incorporated  
20 boroughs... The thought was that  
21 inducements to organize would be offered on  
22 the basis of the granting of home rule powers  
23 plus certain other inducements that would  
24 make it advantageous to them to be boroughs,  
25 as we now have the same program of  
26 inducement to organized communities.<sup>19</sup>  
27

28 *Borough Government in Alaska, supra*, pages 61 – 62.  
29

## 30 **Part 7. The Constitution Encourages Borough Formation, but** 31 **State Laws Impede the Creation of Boroughs** 32

33 As noted above, Article X, Section 1 is interpreted by the Alaska Supreme Court  
34 as encouraging the creation of borough governments. Thus, to be consistent  
35 with the provisions of Article X, the methods established by the Legislature to  
36 organize boroughs should encourage the creation of boroughs.  
37

38 The Local Boundary Commission joins others that have previously expressed a  
39 preference for voluntary extension of borough government. However, many of  
40 those have also taken the position that the State should compel the extension of  
41 borough government in regions capable of supporting boroughs if citizens

---

<sup>18</sup> (Footnote original). *Proceedings*, pp. 2674-76.

<sup>19</sup> (Footnote original). *Proceedings*, p. 2650.

1 choose not to organize voluntarily. For example, the constitutional convention  
2 delegates who wrote the local government provisions of Alaska's Constitution  
3 held the view that creation of boroughs should be compulsory, with provision for  
4 local initiative.<sup>20</sup>

5  
6 Several who have favored voluntary incorporation have also acknowledged that,  
7 to be successful, such an approach requires adequate incentives to encourage  
8 incorporation. Unfortunately, current law has many provisions that act as  
9 disincentives to borough formation and annexation. However, if the disincentives  
10 were removed, it is unlikely that the State still could provide sufficient  
11 inducements to motivate all of its citizens to incorporate boroughs voluntarily.

12  
13 Alaska's "Task Force on Governmental Roles", established by the 1991  
14 Legislature to define Federal, State, and local relationships in the delivery of  
15 public services, "stopped short of endorsing mandatory borough formation  
16 legislation but agreed that continued formation of additional borough  
17 governments should be a *primary* state policy goal."<sup>21</sup> (emphasis added)

18  
19 However, instead of promoting borough formation, State policy has actually  
20 continued to regress in that arena since the 1991 Task Force study.<sup>22</sup>  
21 Citizens and local officials in some areas have also become frustrated over  
22 procedural and policy impediments to borough formation. For example, before  
23 any laws had been written concerning borough government in Alaska, residents  
24 of Cordova who attended a January 6, 1960 meeting of the Local Boundary  
25 Commission at the Cordova High School Auditorium expressed an immediate  
26 need for a Prince William Sound borough.

27  
28 A clear majority recommended that borough boundaries in this area  
29 include Prince William Sound, east to the Canadian border, south  
30 along the border to Yakutat, then west to Prince William Sound:  
31 that this area be unorganized until borough standards are  
32 established so that a decision on a "home rule" or so-called  
33 "general law" boroughs (sic) can be made. (emphasis added)  
34 They felt that although they are probably not ready for "home rule"  
35 at this time, there is a real need for organized borough government

---

<sup>20</sup> Victor Fischer, *Alaska's Constitutional Convention*, 1975, page 119.

<sup>21</sup> Brad Pierce, Governor's Office of Management and Budget, and the  
Alaska Municipal League, *Final Report: Task Force on Governmental Roles*, July  
10, 1992, page 15.

<sup>22</sup> The Local Boundary Commission has chronicled an extensive and  
growing list of borough disincentives in its annual reports to the Legislature since  
the 1980s. Most recently this issue was addressed on pages 23-24 of the  
Commission's report to the 2002 Legislature. That report is available on the  
Internet at:

[http://www.dced.state.ak.us/cbd/lbc/pubs/2001\\_LBC\\_Annual\\_Rpt.pdf](http://www.dced.state.ak.us/cbd/lbc/pubs/2001_LBC_Annual_Rpt.pdf)



1 in this area as soon as possible. (emphasis added) There is a  
2 definite feeling of tie-in with all of Prince William Sound, the  
3 “highway communities” and the Copper River Valley when that road  
4 is finished. They definitely desire that the fishing areas on the west  
5 side of Prince William Sound be included in this area. Yakutat  
6 should be included if such is the wish of that community.<sup>23</sup>  
7

8 *First Report to the Second Session of the First Alaska State Legislature*, Local  
9 Boundary Commission, pages 2 – 4 (February 2, 1960).  
10

11 Despite the aspiration among Cordova residents for a Prince William Sound  
12 Borough in 1960, such a borough, of course, has yet to form. However, officials  
13 of the City of Cordova continue to recognize the need for a borough government.  
14 They cite procedures established under the Borough Act of 1961 as a principal  
15 reason for the lack of a Prince William Sound borough. Dissatisfaction with the  
16 status quo is evident in the following comments from Ed Zeine, then-Mayor of  
17 Cordova in letter to the Chairman of the Local Boundary Commission dated  
18 December 20, 1999:

19 The City of Cordova and many other smaller Alaska cities have been  
20 frustrated in previous attempts to establish borough governments. The  
21 current process is cumbersome and self-defeating.  
22

23 In December of 1999, circumstances led the City of Cordova to seek reform of  
24 State laws similar to that proposed by the Commission in 2001 and embodied in  
25 Senate Bill 48 of the Twenty-Second Alaska Legislature. *Proposal for Reform of*  
26 *State Law Regarding Borough Formation*, City of Cordova (December 1999). At  
27 the time, the Cordova City Council adopted Resolution 12-99-83 providing as  
28 follows:  
29

30 . . . the City Council of Cordova, Alaska, hereby encourages the executive  
31 and legislative branches of the government of the State of Alaska to  
32 review and amend the borough formation process, and offers the paper  
33 “Proposal for the Reform of State Law Regarding Borough Formation” as  
34 a starting point for the process of change.

35 The City of Cordova continues to work toward formation of a Prince William  
36 Sound Borough. On January 8, 2003, the Cordova City Council adopted  
37 Resolution 01-03-05 endorsing the formation of a Prince William Sound borough.  
38

39 Several respected Alaskans and institutions have concluded – some as far back  
40 as the early 1960s – that it is naive to assume that the voluntary approach to  
41 borough formation will succeed except in rare instances.<sup>24</sup> The test of time has  
42 clearly proven them to be correct.

---

23

24 See comments by Thomas Morehouse and Victor Fischer in *Borough Government in Alaska*, page 73, former Governor Jay Hammond in *Tales of*

## **Part 8. Alaska Alone has Unorganized Regions**

Alaska is the only state in the nation that is not organized at the regional level into counties or their equivalent. Alaska is also unique among state governments in the extent to which it assumes responsibility for local services.

The State continues to shoulder the burden for education and plating services in communities that decline to accept local responsibility, even though a number of such communities have ample resources to assume the responsibility. At the same time, the State of Alaska has dramatically reduced financial aid to communities that have assumed local responsibility for services.

The deterrents in State law to form boroughs are so pervasive and so overwhelming that they impede successful incorporation of new borough governments. The process for incorporation of new boroughs actually thwarts local initiative in certain cases. For example, by requiring each of two different classes of voters to initiate incorporation (those within city school districts and those outside city school districts), a relatively small number of voters may block local efforts to incorporate.

## **Section G. Proceedings Involved with this Review**

The legislation directing the Local Boundary Commission to conduct this review of the unorganized borough was approved by the Legislature on May 12, 2002. It was transmitted to the Governor on June 21, 2002.

Then-Governor Knowles signed the legislation into law the same day that it was received from the Legislature. The law went into effect on September 17, 2002.

From the beginning, the Commission endeavored to promote broad public awareness in the Commission's review of the unorganized borough. The Commission also took steps to facilitate public comment on the matter. Extensive information about the Commission's efforts were posted on the Commission's Internet website. Printed materials were widely circulated to potentially interested individuals and organizations. Extensive public notice of the proceedings of the Commission was provided.

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*Alaska's Bush Rat Governor*, page 149; John Rader in *The Metropolitan Experiment in Alaska – A Study of Borough Government*, page 91; Thomas A. Morehouse, et al., *Alaska's Urban and Rural Governments*, page 43; House Research Agency in *A New Mandatory Borough Act: Local Education Costs and Potential Revenues of Newly Created Boroughs*, page 14; and City of Cordova in *Proposal for Reform of State Law Regarding Borough Formation*, December 1999.

1 On October 22, 2002, the Local Boundary Commission drafted a work plan for  
2 the study of the unorganized borough and work on the project proceeded on the  
3 basis of that work plan. At the same meeting, the Commission opted to exclude  
4 from consideration five portions of the unorganized borough that had been  
5 identified by the Commission in the early 1990s as unorganized remnants within  
6 the model boundaries of existing organized boroughs.

7  
8 On November 12, 2002, the Commission mailed significant project background  
9 information to some 360 individuals and organizations. The materials were  
10 posted to the web occurred on same date.

11  
12 On November 13, 2002, the Local Boundary Commission met in Valdez during  
13 the Alaska Municipal League's annual local government conference. The  
14 Commission presented written and verbal information concerning the  
15 unorganized borough review to League members.

16  
17 On December 9, 2002, the Commission met to review information about the  
18 unorganized borough concerning population, per capita household income,  
19 percent of unemployment, percent of adults not working, average household  
20 income, percent of poverty, and residential property values. The Commission  
21 also gave consideration to circumstances not necessarily fully reflected in the  
22 2000 federal census data such as the depressed condition of the commercial  
23 fishing industry, and potential access to oil and gas property tax base. LBC  
24 made a preliminary determination at that time that eight regions of the  
25 unorganized borough may have the financial capacity to operate borough  
26 governments.

27  
28 Notice of the Commission's preliminary determination and additional information  
29 concerning the unorganized borough review was mailed on December 12, 2002  
30 to approximately 350 cities, village-traditional-IRA councils, school districts, and  
31 other interested parties within the eight regions.

32  
33 On January 17, 2003, the Commission met to review draft components of its  
34 report dealing with borough incorporation standards and the application of those  
35 standards to the eight areas under review. At the meeting, the Commission  
36 approved the release of the draft materials for review by the public. Posting of  
37 materials to the web occurred on January 24. Beginning January 27, over 370  
38 copies of the draft materials were distributed.

39  
40 Newspapers have reported on the pending unorganized borough throughout the  
41 course of the Local Boundary Commission's review.

42  
43 Radio stations throughout Alaska has broadcast many reports and even special  
44 programs on the unorganized borough review. For example, the Chair of the  
45 Commission participated in an hour-long program on the topic broadcast by the  
46 Alaska Public Radio Network on November 7, 2002.

1  
2 On February 8, the Local Boundary Commission held a statewide public hearing  
3 on the matter. The hearing convened at 9:00 a.m. and lasted until XXX. The  
4 following communities participated in the hearing:

5  
6 XXXX  
7

8 During the hearing XXXX individuals provided testimony to the Commission  
9 regarding the matter.

10  
11 Written public comment on the matter has been submitted to the Local Boundary  
12 Commission from XXXX individuals.  
13